

FISCAL NOTE**OFFICE OF STATE HUMAN RESOURCES**

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RULES: 25 NCAC 01C.0402 PERMANENT AND TIME LIMITED
APPOINTMENT (Amended)
25 NCAC 01C .0403 TRAINEE APPOINTMENTS (Amended)
25 NCAC 01C .0404 PROBATIONARY APPOINTMENTS
(Amended)
25 NCAC 01D .0201 INITIAL EMPLOYMENT (Amended)

[See the Appendix for proposed rule changes]

STATUTORY AUTHORITY: G.S. Chapter 126

FISCAL IMPACT SUMMARY: State Government: Yes
Local Government: No
Substantial Impact: No
Federal Government: NA
Small Businesses: NA

EFFECTIVE DATE: Upon conclusion of rulemaking process

RULE SUMMARY: These rules were amended to conform to requirements of HB 834 regarding the change of the probationary period from the previous three to nine months to a consistent twenty-four months. The changes clarify employees' status to be probationary until career status is achieved after twenty-four months of continuous service. Prior to the ratification of HB 834 (S. L. 2013-382), employees' status was unclear between the completion of the probationary period and the attainment of career status. The length of the probationary period had no impact on whether an employee could be terminated prior to serving 24 months. Many employees were confused about the meaning of the probationary period and whether they were career State employees and thus required to be terminated for just cause. The ending of the probationary period before the end of 24 months had no impact on an employee's rights. Thus, the statute was amended to make it clear that the probationary period was for the entire 24 month period. This change actually has no fiscal impact, because it is a clarification and just eliminates the distinction between probationary and non-career State employee.

As a result of the change in the probationary law, clarification is needed in the rule for those employees who may have a trainee period less than 24 months to ensure those employees are

not awarded permanent status until they have completed 24 months of continuous employment.

Reference to “permanent full-time” is not necessary as the permanent appointment is not based on how many hours an employee works. This is confusing and should be removed from the rules. Correction of the rule is needed to clarify there is no such thing as a “time-limited permanent position”. Positions are either permanent, time-limited or temporary, so a position cannot be both time-limited and permanent.

Information concerning employee benefits is being removed from the rules. Eligibility for benefits is not determined solely on appointment type. There are other factors that may be involved in determining eligibility for benefits which would be reflected in the law or rule that authorizes the specific benefit. For example, eligibility for retirement benefits is based on appointment type, hours worked and number of months worked per year; therefore, all permanent or time-limited employees may not be eligible for health insurance benefits. Retirement and Health Insurance benefits do not fall under the jurisdiction of the State Human Resources Commission, so referencing the eligibility for those benefits is not necessary in the rule.

The proposed changes also include a few other amendments that are clarifications and do not change the way in which the rule is implemented; therefore, they create no impact as well.

ESTIMATED IMPACT: Rule change does not impact employee pay or paid benefits such as leave earnings, retirement and health insurance. The change to 24 months for the probationary period does increase the eligibility requirement for severance and priority reemployment for both probationary employees and trainees to 24 months.

For period the period from July 1, 2011 through June 30, 2013, the State reduced in force (RIFed) 50 employees with 9 to 24 months of service. The total payout of severance for these employees was \$201,880. The average payout for severance was \$4,037.60 paid out in one month. As a result of the change in the law, and assuming the levels of employees and severance amount paid stay relatively constant in the upcoming years, the annual cost savings to the state for severance pay is estimated to be approximately \$101,000.

The change to the 24 months probationary period has limited impact on an employee’s eligibility for RIF. All employees in an affected work unit will be considered for RIF, and a probationary or trainee employee shall be RIFed before a permanent employee; however, length of service has also always been a factor when determining RIF (the business practice has been last-one- hired, first-one-“RIFed”), so movement to the 24 months of service requirement does not increase an employee’s eligibility for RIF. The only time a permanent employee with more years of service would be RIFed before a permanent employee with less years of service would be in the case of an employee in the same affected work unit who has documented poor performance or disciplinary action. While the RIF policy allows an agency to use poor performance or disciplinary action to trump years of service when determining RIF eligibility,

most agencies choose to proceed with disciplinary action in lieu of RIF because they do not want to reward the employee the severance and RIF priority reemployment benefits. Therefore, there is no additional risk of employees with 9 to 24 months of service from the proposed change. Out of the 50 employees with 9 to 24 months of service that were RIFed from July 1, 2011 through June 30, 2013, the State only reemployed 12 employees. This reemployment statistic mirrors the overall percentage for reemployments for all RIF employees for this same time period. Loss of RIF priority should not impact the reemployment statistics. The loss of RIF priority would only be a factor if the non-priority RIF employee applied for a vacant position that had priority RIF employees in the applicant pool. Considering the priority RIF employee has more years of service than the non-priority RIF employee, it is a high probability priority RIF employee with more years of experience would have been the more qualified selected candidate anyway.

The rule change also does not require any additional staffing or resources to administer. No additional funds would be required to implement these rule changes.

APPENDIX

25 NCAC 01C .0402 is proposed to be amended as follows:

25 NCAC 01C .0402 PERMANENT AND TIME-LIMITED APPOINTMENT

(a) ~~Permanent~~— A permanent appointment is a ~~an permanent full-time~~ appointment to a permanent ~~full-time~~ established position. A permanent appointment shall be given ~~when:~~ when the following conditions have been met:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements and completed 24 months of continuous employment in a position subject to the State Human Resources Act, or
- (3) a time-limited appointment extends beyond three ~~years:~~ years of continuous employment.

(b) ~~Time-limited Permanent~~— A time-limited ~~permanent~~ appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited ~~permanent~~ position. If an employee is retained in a time-limited ~~permanent~~ position beyond three years, the employee shall be designated as having a permanent appointment.

~~(c) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration.~~

~~(d) Employees with a time limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.~~

History Note: Authority G.S. 126-4;

Eff. February 1, 1976;

Amended Eff. October 1, 2004, August 1, 1995; January 1, 1989; June 1, 1983; July 1, 1979.

25 NCAC 01C .0403 is proposed to be amended as follows:

25 NCAC 01C .0403 TRAINEE APPOINTMENTS

(a) A trainee appointment may be made to a permanent position when:

- (1) the job specification includes provisions for a trainee progression leading to regular ~~appointment,~~
appointment;
- (2) recruitment efforts fail to attract qualified ~~candidates,~~ candidates;
- (3) operating need warrants a ~~trainee,~~ trainee; or
- (4) the recommended applicant fails to meet State education and experience requirements.

(b) ~~Employees with a trainee appointment earn leave, and receive total state service credit, retirement benefits, and health benefits. When applicable, trainees~~ Trainees not in time limited positions subject to a reduction in force who have completed ~~six~~ 24 months of service or who had a permanent appointment prior to entering a trainee appointment shall receive severance pay as provided in G.S. 126-8.5 and priority reemployment consideration.

(c) Employees with a trainee appointment shall work 24 continuous months to attain career status. An employee with a trainee appointment shall achieve career status but remain in a trainee appointment if the length of the trainee progression is greater than 24 months.

History Note: Authority G.S. 126-4; S.L. 2012-382; G.S. 126-1.1;

Eff. February 1, 1976;

Amended Eff. October 1, 2004; August 1, 1995; ~~August 1, 1978.~~ August 1, 1978;

Temporary Amendment Eff. May 23, 2014.

25 NCAC 01C .0404 is proposed to be amended as follows:

25 NCAC 01C .0404 PROBATIONARY APPOINTMENTS

- (a) ~~Individuals~~ Reinstatements that follow a break in service or new hires receiving ~~initial~~ appointments to permanent or time-limited ~~permanent~~ positions must serve a probationary period. The probationary ~~periods~~ period is an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance ~~will~~ does not meet acceptable standards. The ~~maximum~~ length of the probationary period shall be ~~not less than three nor more than nine~~ 24 months of either full-time or part-time employment from the actual date of employment. ~~Within 90 days of employment, prior to the granting of a permanent or time-limited permanent appointment, credentials~~ Credentials and application information provided by the employee must be ~~verified~~. verified within 90 days of employment. Agencies shall inform applicants in writing that credentials must be verified as a condition of continued employment.~~verified prior to the granting of a permanent or time-limited permanent appointment.~~
- (b) Employees with a probationary appointment ~~earn leave, and receive total state service credit, retirement and health benefits. They~~ are not eligible for severance pay or priority reemployment consideration.

History Note: *Filed as a Temporary Amendment Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*
 Legislative Objection Lodged Eff. June 13, 1983;
 Authority G.S. 96-29; 126-4; ~~S.L. 2012-382~~; G.S. 126-1.1;
 Eff. February 1, 1976;
 Amended Eff. June 1, 1983; August 1, 1980; January 1, 1979; August 1, 1978;
 Curative Amended Eff. June 22, 1983;
 Amended Eff. August 1, 1995; March 1, 1988; ~~December 1, 1985~~; December 1, 1985;
 Temporary Amendment Eff. May 23, 2014.

25 NCAC 01D .0201 is proposed to be amended as follows:

25 NCAC 01D .0201 INITIAL EMPLOYMENT

(a) A new appointment is the initial employment of an individual to a position ~~or the re-employment of individuals who are either not eligible for reinstatement or, at the agency's option, are not offered reinstatement.~~ in State government.

(b) An employee entering into state service in a permanent or time-limited ~~permanent~~ position shall be given a probationary or trainee ~~appointment~~ appointment. ~~unless the employee is eligible for and the agency chooses to make reinstatement with a permanent appointment.~~ The probationary and trainee appointment periods are intended to serve as an extension of the selection process and are used to determine whether the person meets acceptable performance standards for the work for which employed. The employee shall earn all the benefits of an employee with a permanent appointment during this time.

(c) The duration of a probationary appointment shall be ~~not less than three nor more than nine~~ 24 months of either full-time or part-time employment. ~~The determination of the appropriate length shall depend on the complexity of the position and the rate of progress of the employee.~~ (This probationary period is not the same as the probationary period prescribed for criminal justice officers in 12 NCAC 05 .0401.) The duration of the trainee appointment is established for each regular classification to which a trainee appointment is made.

(d) The conditions of the probationary and trainee appointments shall be ~~clearly~~ conveyed to the applicant prior to appointment. During the probationary or trainee period, the supervisor shall work ~~closely~~ with the employee in counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee shall be reviewed during discussions between the employee and the supervisor. Following the probationary period when the supervisor in consultation with other appropriate administrators determines that the employee's performance indicated capability to become a satisfactory performer and merits retention in the position, the employee shall be given a permanent appointment to the class. If the determination is that the employee's performance indicates that the employee is not suited for the position and ~~cannot be expected to~~ does not meet acceptable performance standards, the employee shall be separated from that position. Employees may ~~also~~ be separated during a probationary appointment for causes related to performance of duties or unacceptable personal conduct. Employees in or trainee appointment appointments who are not career State employees may also be separated for causes related to performance of duties or unacceptable personal conduct. Except in cases of alleged discrimination, harassment, or retaliation, a dismissal separation under these conditions of an employee in a trainee appointment who is not a career State employee is not subject to the right of appeal to the State Personnel Commission. may not be appealed through the agency grievance procedure and then on to the Office of Administrative Hearings.

History Note: Authority G.S. 126-4; G.S. 126-1.1, -34.01, -34.02;

Eff. February 1, 1976;

Amended Eff. August 1, 1995; December 1, 1988; January 1, 1979; December 1, 1978;

Temporary Amendment Eff. May 23, 2014.